IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION
SUIT NO.5 OF 1983

M/s. Kachins Kreations ...Plaintiffs

Versus

M/s. Pan American World Airways Incorporated ...Defendants

Mr. Subhod Joshi i/b. M/s Nandlal Kothari & Sabir for Plaintiff

None present for defendants

CORAM : S.R. SATHE,J.
DATED : 16th APRIL,2007

ORAL JUDGEMENT :-

1. The Plaintiff has filed this suit against the defendants for recovery of amount of Rs. 1,34,556/- and future interest on the said amount.

2. The brief facts of the Plaintiff's suit are as under :-

Plaintiff is a registered partnership firm carrying on business of export of readymade garments. The defendant is a company incorporated according to laws prevailing in USA and have their registered office at New York and one of their Indian Offices at Taj Mahal Inter-continental, Apollo Bunder,Bombay. The defendants are doing business as carrier of passenger and goods by air.

3. The Plaintiff agreed to sale and supply 3000 pieces of wearing apparels to M/s. The Old Free Port Shop, N.V. Of Curacao, Netharlands at the rate of Rs. 25/- per piece of total FOB value of Rs. 75,000/-. The shipment of the same was to be made by the end of October-1980. The said purchaser had opened through their bankers in Curacao an irrevocable letter of credit dated 20/09/1980 in favour of one M/s. Tex Styles International for Rs. 75,000/- plus costs of freight and insurance. Plaintiffs were substituted as beneficiary under the said letter of credit instead of Tex Styles International. The said letter of credit was valid upto 30/10/1980. The Plaintiffs entrusted 30 packages containing 3000 pieces of wearing apparels for carriage by air to Curacao to the defendants and paid Rs.16,913/- by way of air freight to the defendants. The goods were to be flown on 21/10/1980. As per air bill, no transshipment through any south or central American ports was allowed. The defendants also issued their insurance certificate dated 22/10/1980 regarding 30 packages mentioned above. The insured value of the goods was Rs.1,10,000/-. The consignment was to reach the buyer on 22/11/1980. However it did not reach accordingly. Hence, Plaintiff wrote a letter dated 24/11/1980 to the defendants as the goods did not reach

the destination the opening bank refused to make payment under letter of credit. As defendants failed and neglected to repay, the letter dated 24/11/1980, the Plaintiff again pointed out to defendant that the buyer had communicated to their agents in Bombay that since the delivery date had long passed they would not accept the same. As Plaintiff did not receive any communication from the defendant even after 80 days from the date of dispatch of goods they put up the claim for in all Rs.1,02,556/- with the defendants and also informed the defendant that on their failure to make the payment they would be liable to pay interest from 07/01/1981. Thereafter, also Plaintiff wrote 3 letters. The defendants by their letter dated 16/09/1981 informed the Plaintiff that they have referred the claim to their insurance agent and claim department at New York and they would revert to Plaintiff shortly. The defendant then informed that they were informed by the claim department that their claim was being handled by Pan Am Insurers, the Chubb group of Insurance Company at New York.

4. According to them subsequently, they came to know that the consignment reached to the destination in December-1980 i.e. two months after the date of

dispatch from Bombay. They also came to know that some of the packages were lost in transit. The Plaintiffs did not receive any amount of the said consignment and thereby suffered loss to the tune of Rs. 1,34,556/- as marked in Exh-I of the plaint. Hence Plaintiffs filed the present suit on 22/10/1982 against the defendants.

5. The defendants filed their Written Statement and contended that the suit is bad for non joinder of necessary parties. According to them, Royal Dutch Air Lines was necessary and proper party to the present suit and in their absence, the suit is liable to be dismissed. The defendants denied the Plaintiff's case that Plaintiff is a registered partnership firm. According to them, suit is liable to be dismissed on the ground that Plaintiff is not a registered partnership firm. They agreed that the shipment was tendered to them through approved agent Freight Wings and Travel Private Limited who issued Airway bill No.026/30665342 dated 14/10/1980 on behalf of defendant. According to defendant, as per the contract between Plaintiff and them the liability of the defendants was limited and that the Plaintiffs might increase the said limitation and liability by declaring higher value for carriage and paying supplemental

charges if required. The defendants declared Rs. 75,000/- being declared value for custom and Rs. 1,10,000/- being for insurance which was also subject to the terms mentioned on the reverse of the air way bill. According to defendant, there was no time fixed for carriage of the goods from its original destination. According to them, Plaintiffs were aware that the defendants did not have direct connection with Curacao air port and there was likelihood of the defendants using another airlines for shipping the goods to Curacao. The defendants used KLM Air Lines for transportation of the said goods to Curacao and the consignment reached Curacao on or about 18/12/1980 and ultimately, KLM issued a notice dated 26/01/1981 of non-delivery and advice that the shipment was undelivered inspite of several arrival notification being sent to the consignee. According to defendants there was no negligence or any inefficient handling of the consignment and the defendants filed a false claim. Hence on all these grounds the defendants prayed for the dismissal of the suit.

6. On these pleadings the Court (CORAM : P.V. KAKADE,J.) has framed the following issues. I have given my findings as mentioned against the same.

ISSUES	FINDINGS
(a) Whether the Plaintiffs prove that the Plaintiffs firm is registered with the Registrar of Firms ?	**YES**
(b) Whether the defendants prove that the suit is bad for non-joinder of (K.L.M.) Royal Dutch Airliner as a party to the suit ?	**NO**
(c) Whether the Plaintiffs prove the defendants had issued their Insurance Certificate dated 22/10/1980 certifying that the consignment of 30 parcels weighing 377 kgs. Containing wearing apparels had been at the insured for value of Rs. 1,10,000/- and had paid to the defendants Rs. 16,913/- for the same ?	**YES**
(d) Whether the Plaintiffs prove that they had on 22/04/1980 received a Telex message from their buyers that the consignment had not reached the destination ?	**YES**

(e) Whether the Plaintiffs had by their letter dated 24/11/1980 informed the defendants that the goods had not reached the destination and had called upon the defendants to inform the plaintiffs the date of delivery in case the goods were delivered to the buyer and had stated that failing compliance by the defendants, the defendants will be held responsible for the loss as stated in para 5 of the plaint ?	**YES**
(f) Whether the defendants are liable to pay to the plaintiffs the sum of Rs. 1,34,556/- and interest as claimed in the plaint?	**YES**

ISSUE NO.A TO F

7. In order to prove the suit claim the Plaintiff has filed affidavit of Zulfiqar Asgarbhai Shahpurwala partner of the Plaintiff's firm. He has also produced the registration certificate issued by the Registrar of Firms to show that the Plaintiff is a registered partnership firm.

8. The Plaintiff's witness has stated on oath that Plaintiff agreed to sale 3000 pieces of wearing apparels to M/s. Old Free Port Shop, N.V. Of Curacao, Netharlands. Total FOB value of the same was

Rs.75,000/-. He has also stated that purchaser had opened through their bank in America in Curacao an irrevocable letter of credit bearing No.51206 dated 10/09/1980. He has also stated that by amendment dated 04/10/1980, plaintiffs were substituted as beneficiaries under the letter of credit. According to Plaintiff, Plaintiff delivered 3000 pieces to be carried by air to Curacao and paid the necessary freight i.e. Rs.16913/- and defendants issued the air way bill dated 14/10/1980. Not only that but defendant also delivered to Plaintiffs insurance certificate. He has produced the said documents. Plaintiff's witness has stated that the consignment did not reach the destination within a reasonable time. Naturally, Plaintiff made query with the defendants who informed the Plaintiffs that they have taken up the matter with the insurance agent. However, it transpired that for a period of about 2 months the consignment had not reached the destination and when it was received it was found that some of the packages out of the consignment were lost. The defendant did not bother to inform the Plaintiff about the loss of packages. As a result of the insufficient packages received, the buyer refused to take the delivery. Thus, because of the negligence of the defendant, Plaintiffs suffered loss. Hence

Plaintiff issued notice to the defendant and called upon them to pay the amount and also informed them that on their failure they will have to pay the interest at 18%.

9. It must be noted that the entire evidence of Plaintiff has gone unchallenged in as much as Plaintiff's witness is not cross-examined by the defendants. The defendants have also not adduced any evidence to support their contentions. Under the circumstances, there is no reason to disbelieve the Plaintiff's evidence and documents produced by him. So, relying on the Plaintiff's evidence I hold that Plaintiffs have proved that on the date of filing of the suit Plaintiffs were entitled to receive amount of Rs. 1,34,556/- from the defendants.

10. The letter of credit and other documents do not specifically contain any stipulation about the interest. However, it does appear that Plaintiff has issued notice wherein Plaintiffs had stated that interest will be charged if amount is not paid immediately. Hence, I pass the following order:-

O R D E R

1. The defendants to pay Plaintiffs Rs.1,34,556/-

and future interest on the amount of Rs. 99,383/- (price of the goods and the other expenses met by the Plaintiff) @ of Rs. 6% per annum from the date of the suit till realization of the amount.

2. The defendants to pay Plaintiffs cost of this suit and bare their own.

(S.R. SATHE,J.)